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California Regional Water Quality Control Board

Los Angeles Region

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320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.swrcb.ca.gov/rwqcb4>

Aziz Elattar
Caltrans, District 7
Office of Environmental Planning
120 S. Spring Street
Los Angeles, CA 90012

CONDITIONAL CERTIFICATION FOR PROPOSED AND "AFTER-THE-FACT" ACTIVITIES: BANK STABILIZATION WITH ROUTINE MAINTENANCE DRAIN CLEARING ACTIVITIES FOR WINTER 2001 (Corps' Project No. 2002-00211-SAD), TRIBUTARIES TO THE SANTA CLARA RIVER, THE SOUTH FORK SANTA CLARA RIVER, AND THE NORTH FORK MATILJA CREEK, LOS ANGELES AND VENTURA COUNTIES (File No. 01-124)

Dear Mr. Elattar:

In accordance with §3855 of Title 23 of the California Code of Regulations, an application for a Clean Water Act §401 Water Quality Certification shall be filed with the Regional Board Executive Officer in advance of any discharge. The California Regional Water Quality Control Board, Los Angeles Region (Regional Board), notes that your application request, on behalf of the California Department of Transportation, District 7 (the Applicant), includes "after the fact" activities that were conducted without the required prior certification due to emergency conditions. Activities involved installing ungrouted rock and removing willow and mulefat vegetation. In recognition of our inability to appropriately characterize the pre-project conditions, we have increase the mitigation ratio component of your certification to ensure that we have addressed all the impacts associated with your project. The Regional Board expects that all future violations will be avoided and that any impending projects involving a discharge will be fully authorized prior to commencement of work activities. Any future violations may result in civil liabilities of \$10,000 per day.

Your application was deemed complete on October 19, 2001.

I hereby certify that there is a reasonable assurance that the discharge from the Bank Stabilization with Routine Maintenance Drain Clearing Activities for Winter 2001, as proposed and described in Attachment A, if performed in accordance with all applicable water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region* (1994), and in accordance with the conditions specified in Attachment B, will comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act.

Finally, this certification does not foreclose the imposition of appropriate penalties for failure to obtain this certification prior to commencement of work. The Applicant shall be liable civilly for any violations of this certification in accordance with the California Water Code. This certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this certification action, please contact Anthony Klecha, Lead, Section 401 Program, at (213) 576-6785, or Jason Lambert at (213) 576-5733.

[Original signed by]

[January 3, 2002]

Dennis A. Dickerson
Executive Officer

Date

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>



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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

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Karl Price
Caltrans, District 7
Office of Environmental Planning
120 S. Spring Street
Los Angeles, CA 90012

Oscar Balaguer
State Water Resources Control Board
Division of Water Quality
P.O. Box 944213
Sacramento, CA 94244-2130

Trudy Ingram
California Department of Fish and Game
Streambed Alteration Team
4949 View Ridge Avenue
San Diego, CA 92123

Susan DeSaddi
U.S. Army Corps of Engineers
Regulatory Branch, Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Steven John
U.S. Environmental Protection Agency
c/o U.S. Army Corps of Engineers
Regulatory Branch, Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Alexis Strauss
Director of Water Division (WTR-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Vicki Clark, Staff Attorney
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Jessie Altstatt
Santa Barbara Channel Keeper
120 West Mission Street
Santa Barbara, CA 93101

Ken Berg
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Diane Noda
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Aaron Setran (WTR-8)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

ATTACHMENT A

Project Information File No. 01-124

1. Applicant: California Department of Transportation, District 7
120 S. Spring Street
Los Angeles, CA 90012
Phone: (213) 897-0686 Fax: (213) 897-0685
2. Applicant's Agent: Karl Price
120 S. Spring Street
Los Angeles, CA 90012
Phone: (213) 897-1839 Fax: (213) 897-0685
3. Project Name: Bank Stabilization with Routine Maintenance Drain Clearing Activities for Winter 2001
4. Project Location: Various locations, Los Angeles and Ventura Counties
5. Type of Project: Bank stabilization and drain maintenance clearing
6. Project Description: The proposed project involves bank stabilization and maintenance activities at four locations within Los Angeles and Ventura Counties. Routine clearing at two of the locations is proposed to ensure proper water flow and protection of state highway facilities. Specific activities are as follows:
 - *Site No. 52-010:*
Add rock to stabilize and widen the existing access road;
 - *Site No. 53-015:*
Conduct routine drainage clearing; remove several arroyo willow and mulefat trees, and install ungrouted rock;
 - *Site No. 53-020:*
Conduct routine drainage clearing; remove arroyo willow and cottonwood trees, and install ungrouted rock; and
 - *Site No. 53-022:*
Install rock around existing culvert outlet.

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7. Federal Agency/Permit: U.S. Army Corps of Engineers
NWP No. 3, 13, 33 (Permit No. 2002-00211-SAD)
8. Other Required Regulatory Approvals: California Department of Fish and Game
Streambed Alteration Agreement
9. California Environmental Quality Act (CEQA) Compliance: The proposed project is Categorical Exempt from CEQA pursuant to the CEQA Guidelines, Section 15301 (Existing Facilities).
10. Receiving Waters and Designated Beneficial Uses:
- Unnamed drainage, tributary to the North Fork Matilija Creek (Hydrologic Unit No. 402.20)
MUN, IND, PROC, AGR, GWR, REC-1, REC-2, WARM, COLD, WILD, RARE, MIGR, SPWN, WET
 - Unnamed drainage, tributary to the Santa Clara River (Hydrologic Unit No. 403.51)
MUN, IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD, RARE, WET
 - Placerita Canyon Creek, tributary to the South Fork of Santa Clara River (Hydrologic Unit No. 403.51)
MUN, IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD
 - Unnamed drainage, tributary to the Santa Clara River (Hydrologic Unit No. 403.55)
MUN, IND, PROC, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD, RARE, WET
11. Impacted Waters of the United States:
- *After-the-Fact Impacts:*
Federal jurisdictional wetlands: 0.0803 permanent and 0.023 temporary acres
 - *Proposed Impacts:*
Federal jurisdictional wetlands: 0.0207 permanent acres; and Non-wetland waters (unvegetated streambed): 0.0046 permanent acres

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12. Dredge Volume: None
13. Related Projects Implemented/to be Implemented by the Applicant: The Applicant has requested a five-year permit/certification in order to perform routine and recurring maintenance clearing at Sites 53-015 and 53-020.
14. Avoidance/Minimization Activities: The Applicant has proposed several Best Management Practices, including, but not limited to, the following:
- Removal of minimal vegetation in the maintenance areas;
 - Whenever possible, work will be conducted in the dry season, incorporating a five-day clear weather forecast;
 - No work will be performed in flowing or ponded water. A water diversion plan will be prepared for any work taking place when water is present or during the RWQCB's designated rainy season (October 1 – May 31);
 - Using appropriate erosion control techniques, including: silt fencing, hay bales, sand bags, erosion control mats, and post-activity hydroseeding;
 - Conduct upstream and downstream water quality monitoring for any activity requiring water diversion;
 - Conduct environmental reviews and biological surveys prior to commencement of work activities, as warranted;
 - Wherever possible, exotic plant species in and around work areas will be removed; and
 - To adequate access and document the type and amount of vegetation removed during each successive clearing of a site, pre and post clearing photos will be taken, maintained on file and periodically provided to the resource agencies.

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15. Proposed
Compensatory
Mitigation:

To offset the proposed impacts, the Applicant has proposed to transfer funds to an appropriate conservation agency for the restoration/enhancement of 0.535 acres of wetland habitat. Funds will be transferred within six months of permits being issued. Agency or organizations will be identified and funds will be transferred to allow for restoration to take place in the designated amounts within each watershed. Additionally, the Applicant has proposed to hydroseed the 0.0018-acre Site 51-010 with native vegetation.

See Attachment B Conditions of Certifications, Additional Conditions for modifications and additions to the above proposed compensatory mitigation.

ATTACHMENT B

Conditions of Certification File No. 01-124

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' Section 404 Permit and the California Department of Fish and Game's Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the state.**
2. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the state. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the state.
3. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the state.

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Conditions of Certification File No. 01-124

4. The Applicant shall not conduct any construction activities within waters of the state during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the state.
5. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.
6. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** to this Regional Board. The plan shall include the proposed method and duration of diversion activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for pH, temperature, dissolved oxygen, turbidity, and total suspended solids shall be implemented. These constituents shall be monitored on a **daily** basis during the first week of diversion activities, and then on a **weekly** basis, thereafter, until the in-stream work is complete. Results of the analyses shall be submitted to this Regional Board by the **15th** day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.
7. The Applicant shall restore the proposed **0.023 acres** of TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the state. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species to the extent feasible. The Applicant shall implement appropriate Best Management Practices to control erosion and runoff from areas associated with this project.
8. The Applicant shall provide COMPENSATORY MITIGATION to offset both the “after-the-fact” and proposed impacts to **0.103 acres** and **0.0253 acres** of jurisdictional waters,

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respectively, by transferring sufficient funds to an appropriate conservation agency for the creation, restoration and/or enhancement of a minimum of **0.535 acres** of wetland/riparian habitat. Mitigation shall occur within the impacted watersheds to the extent feasible. For Site No. 52-010, mitigation shall occur onsite by hydroseeding the **0.0018-acre** project area with native vegetation. The corresponding mitigation-to-impact ratios are as follows: 5:1 and 3:1 for “after-the-fact” permanent and temporary impacts, respectively, and 3:1 and 1:1 for the proposed permanent impacts to wetlands and unvegetated streambed, respectively.

9. Within **six (6) months** of receipt of the U.S. Army Corps of Engineers’ authorization under Section 404 of the federal Clean Water Act, the Applicant shall complete transfers of all mitigation funds and submit copies of any final agreements (including transfer dollar amount, size in acres, location defined by latitude and longitude, and a description and duration of mitigation activities) made between the Applicant and the conservation agency demonstrating compliance with the above compensatory mitigation requirement.
10. The Applicant shall provide ADDITIONAL COMPENSATORY MITIGATION at a ratio of at least **1:1 per maintenance event** (based on area of impact) to offset any subsequent impacts to aquatic resources as a result of any future drainage clearing activities. If the Applicant can demonstrate to the Regional Board, via photo documentation, that no aquatic resources (e.g., wetland/riparian vegetation) are present within the drainages immediately prior to conducting any clearing activities, this mitigation requirement is waived. In the event that mitigation is required, the Applicant shall conduct onsite mitigation, including bank revegetation with riparian species native to the area and removal of non-native vegetation, if available. If onsite mitigation is unavailable, the Applicant shall transfer sufficient funds to an appropriate conservation agency for wetland and/or riparian mitigation activities based on the minimum 1:1 ratio. Any transfers of funds shall occur within **ninety (90) days** of commencement of the respective clearing activity. The Applicant shall submit to this Regional Board a copy of all agreements (including transfer dollar amount, size in acres, location defined by latitude and longitude, and a description and duration of mitigation activities) made between the Applicant and the conservation agency demonstrating compliance with this compensatory mitigation requirement. All mitigation activities shall occur within the respective impacted watershed to the extent feasible.
11. Prior to any subsequent maintenance activities within the subject drainages, including clearing, maintenance by-hand, and/or the application of pesticides, the Applicant shall submit to this Regional Board a NOTIFICATION of any such activity. Notification shall include: (a) the proposed schedule; (b) a description of the drainage’s existing condition; (c) the area of proposed temporary impact within waters of the state; (c) a description of any existing aquatic resources (e.g., wetland/riparian vegetation); and (d) any proposed compensatory mitigation. Notifications must be submitted a minimum of **four (4) weeks** prior to commencing work activities.

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12. Prior to conducting any maintenance activities at **Site No 52-010**, the Applicant shall provide to this Regional Board documentation prepared by the National Marine Fisheries Service that indicates the proposed project is not likely to adversely affect **Southern steelhead trout (*Oncorhynchus mykiss irideus*)**.
13. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number **01-124**. Submittals shall be sent to the attention of the Nonpoint Source Unit.
14. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.
15. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
 - (b) In response to a suspected violation of any condition of this certification, the State Water Resources Control Board (SWRCB) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) In response to any violation of the conditions of this certification, the SWRCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
16. This certification shall expire **five (5) years** from the date of signature. The Applicant may request a renewal of this certification prior to its termination. Renewals may be granted in **five-year (5-year)** increments, may be subject to additional filing fees, and will require Regional Board approval. If the Applicant fails to request a renewal prior to the certification's expiration, then the Applicant shall submit a new application and appropriate filing fees.